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Taxes--Constitutional Law--Nondiscriminatory Ad Valorem Tax Not Prohibited by Import-Export Clause

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TAXES—CONSTITUTIONAL LAW—NONDISCRIMINATORY AD VALOREM TAX NOT PROHIBITED BY IMPORT-EXPORT CLAUSE

In *Michelin Tire Corp. v. Wages*[1] the United States Supreme Court held that the assessment by the tax commissioners and tax assessors of Gwinnett County, Georgia, of a nondiscriminatory ad valorem property tax against petitioner's inventory of imported tires maintained at its wholesale distribution warehouse was not within the prohibition of the Import-Export Clause of the Constitution.[2]

Petitioner, Michelin Tire Corp., imported and distributed in the United States tires and tubes manufactured in France and Nova Scotia. This distribution was accomplished from warehouses throughout the country. In this process 25% of the tires and tubes were imported from Nova Scotia and were delivered to the United States in over-the-road trailers packed and sealed at the factory. The other 75% were delivered by sea from France and Nova Scotia in sea vans packed and sealed at the factories. The tires were loaded into the vans or trailers in bulk. When unloaded they were stored on pallets by type. This was the only processing required before sale and delivery.

The respondent county assessed an ad valorem property tax against the tires and tubes that were in the warehouse on the assessment date. Michelin brought an action for declaratory and injunctive relief in the Gwinnett County Superior Court in which it was alleged that with the exception of certain passenger tubes which had been removed from the original shipping cartons the tax was prohibited by the Constitution.[3] The court granted the requested relief. The Supreme Court of Georgia affirmed as to the tubes which remained in the corrugated shipping cartons. The court reversed as to the tires stating that they had lost their status as imports. The court held the tires were subject to taxation because they were sorted and stored with other tires held for sale.[4] Michelin appealed to the United States Supreme Court as to the assessment of the ad valorem tax against the imported tires.[5]

In *Low v. Austin*[6] the Supreme Court held that the imposition of a nondiscriminatory ad valorem property tax on imported goods by the states was prohibited by the Import-Export Clause until the goods lost

1. ___ U.S. ___, 96 S.Ct. 535, 46 L.Ed.2d 495 (1976).
2. ___ U.S. at ___, 96 S.Ct. at 538, 46 L.Ed.2d at 500.
3. U.S. CONST. art. I, §10, cl. 2.
4. 233 Ga. 712, 214 S.E.2d 349 (1975).
5. ___ U.S. at ___, n.2, 96 S.Ct. at 538, n.2, 46 L.Ed.2d at 499, n.2. Respondents did not cross-petition as to the holding of the Georgia Supreme Court regarding the tubes in the corrugated shipping cartons.
6. 80 U.S. (13 Wall.) 29, 20 L.Ed. 517 (1871).

their import status and became part of the mass of property within the state. In that case the California Supreme Court had upheld the constitutionality of a nondiscriminatory ad valorem tax on the theory that such a tax did not tax the goods as imports but as property within the state. The Supreme Court disagreed and held that such a tax was precluded by the holding of *Brown v. Maryland*.[7]

In *Brown* the Court held unconstitutional an act of the Maryland legislature which required importers to take out a license before they could sell their goods. The Court admitted that while a rule with universal application might be difficult to formulate, it was possible to state generally when a tax was prohibited by the Constitution.

> It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution.[8]

In reversing the assessment of the ad valorem tax, the *Low* Court employed the reasoning of *Brown* to hold that any such tax was within the prohibition of the Constitution and without the power of the state.[9] The goods while they remained in the status of imports were not within the taxing power of the state.[10]

In later cases the question of the constitutionality of the imposition of taxes was decided after inquiring as to whether the goods retained their status as imports. The Court consistently failed to consider the nature of the tax, but merely relied upon the test in *Brown* as to whether the goods were in their original package or form.[11]

In considering the *Michelin* case, the Court affirmed the Georgia Supreme Court without considering the question of whether or not that court was correct in holding that the tires could no longer be given the status of imports.[12] The Court found it unnecessary to consider that question because it concluded that imposition of a "nondiscriminatory ad valorem tax [was] not the type of state exaction which the Framers of the Constitution

7. 25 U.S. (12 Wheat.) 419, 6 L.Ed. 678 (1827).

8. *Id.* at 441-442, 6 L.Ed. at 686.

9. 80 U.S. (13 Wall.) at 34, 20 L.Ed. at 519.

10. *Id.* at 35, 20 L.Ed. at 519.

11. *See* Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 79 S.Ct. 383, 3 L.Ed.2d 490 (1959)(while the assessed tax was an ad valorem tax, the inquiry was limited to the status of the goods); Hooven & Allison Co. v. Evatt, 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252 (1945); *and* May v. New Orleans, 178 U.S. 496, 20 S.Ct. 976, 44 L.Ed. 1165 (1900).

12. ___ U.S. at ___, 96 S.Ct. at 538, 46 L.Ed.2d at 500.

or the Court in *Brown* had in mind. . . ."[13] The Court, therefore, overruled *Low*.[14]

In examining the reasons for the inclusion of the Import-Export Clause in the Constitution, the Court emphasized the defects of the Articles of Confederation which the framers of the Constitution sought to alleviate, and how this was to be accomplished.

The Court observed that to avoid the weaknesses of the Articles of Confederation, the Constitution gave exclusive power to the Federal Government to levy imposts and duties on imports so that it could speak with one voice when regulating trade with other countries;[15] so that tax proceeds from imports could be a source of revenue for the federal government;[16] and so that coastal states could not interfere with the flow of goods to inland states.[17] The Court rejected the notion that a nondiscriminatory ad valorem tax would impede these objectives. A tax based on the foreign origin of the goods might provide such an impediment but a nondiscriminatory ad valorem tax would have no more than the incidental effect allowed by other decisions and would not substantially affect the level of imports.[18]

The Court further stated that the Import-Export Clause prohibition on imposts or duties may be read as to allow other types of taxes which do not tax imports *as imports*. The Court noted that at the time of the drafting of the Constitution imposts and duties had carried the general inference of being applied to imports while taxes did not.[19] The Court declined, because of the ambiguity of the Import-Export Clause, to extend its prohibition to taxation which does not bring about the problems that the drafters sought to eliminate.[20]

The Court found further support for its conclusion in the *Brown* decision itself. In *Brown* the Court did not give a complete interpretation of the limits of the Import-Export Clause prohibition because the only question

13. *Id.* at ____, 96 S.Ct. at 539, 46 L.Ed.2d at 502.

14. *Id.* at ____, 96 S.Ct. at 538, 46 L.Ed.2d at 500.

15. *See* 25 U.S. (12 Wheat.) at 439, 6 L.Ed. at 685; 358 U.S. at 555-556, 79 S.Ct. at 395, 3 L.Ed.2d at 504 (Frankfurter, J., dissenting); *and* Cook v. Pennsylvania, 97 U.S. 566, 574, 24 L.Ed. 1015, 1018 (1878).

16. 25 U.S. (12 Wheat.) at 439, 6 L.Ed. at 685; 358 U.S. at 556, 79 S.Ct. at 395, 3 L.Ed.2d at 504 (Frankfurter, J., dissenting).

17. 25 U.S. (12 Wheat.) at 440, 6 L.Ed. at 686; 97 U.S. at 574, 24 L.Ed. at 1018; 358 U.S. at 545, 79 S.Ct. at 389, 3 L.Ed.2d at 498; *Id.* at 556-557, 79 S. Ct. at 395, 3 L.Ed.2d at 504-505 (Frankfurter, J., dissenting).

18. ____ U.S. at ____, 96 S.Ct. at 541-542, 46 L.Ed.2d at 504. Cases cited by the Court for this proposition were: Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 79 S.Ct. 383, 3 L.Ed.2d 490 (1959)(taxation of goods committed to current operational needs by manufacturer); May v. New Orleans, 178 U.S. 496, 20 S.Ct. 976, 44 L.Ed. 1165 (1900)(taxation after breakup of shipping cases); Waring v. The Mayor, 75 U.S. (8 Wall.) 110, 19 L.Ed. 342 (1868) (taxation after initial sale).

19. ____ U.S. at ____, 96 S.Ct. at 543, 46 L.Ed.2d at 506, *quoting from* 1 W. CROSSKEY, POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES 296-97 (1953).

20. ____ U.S. at ____, 96 U.S. at 544, 46 L.Ed.2d at 508.

there presented was the constitutionality of requiring an importer to obtain a license from the state.[21] The *Brown* Court did, however, state that "there must be a point of time when the prohibition ceases, and the power of the state to tax commences. . . ."[22] In *Michelin* the Court pointed out that *Brown* recognized two occasions when such a tax would not violate the Constitution. The Court held that the prohibition would not be applicable if the tax were assessed after the status of an import was lost. This determination was to be made by the original package doctrine.[23]

As to the second situation, the Court in *Michelin* termed this "another situation of particular significance . . . ."[24] This occasion was when an import was taxed but not *as an import.* In *Brown* the Court examined the exception made from the prohibition of the Import-Export Clause as to those assessments necessary for execution of the inspection laws of the states.[25] The opinion in *Michelin* emphasized the Court's treatment of this exception. Further emphasis was placed on the similar characteristics between the exception necessary for execution of the state's inspection laws and the prohibited assessments.[26] In addition, in *Brown* certain assessments were declared outside the prohibition of the Constitution because they did not single out imports but attached to all goods.[27] From this the Court concluded that *Brown* did not intend that all impositions of state taxes be prohibited merely because the goods retained the status of imports, but rather the decision had intended to allow those assessments which treated the imports "in a manner that did not depend on the foreign origins of the goods."[28]

The Court further cited the *License Cases*[29] as supportive of their holding. The *Michelin* Court found that *Low* had also misread the views of Chief Justice Taney expressed there.[30] While the *Low* opinion had stated that assessments directly upon imports as imports were prohibited, the Court in *Michelin* noted that Chief Justice Taney had further stated:

> Undoubtedly a State may impose a tax upon its citizens in proportion to the amount they are respectively worth; *and the importing merchant is liable to this assessment like any other citizen, and is chargeable accord-*

21. 25 U.S. (12 Wheat.) at 436, 6 L.Ed. at 684.
22. *Id.* at 441, 6 L.Ed. at 686.
23. ___ U.S. at ___, 96 S.Ct. at 546, 46 L.Ed.2d at 509.
24. *Id.* at ___, 96 S.Ct. at 546, 46 L.Ed.2d at 510.
25. 25 U.S. (12 Wheat.) at 438, 6 L.Ed. at 685.
26. ___ U.S. at ___, 96 S.Ct. at 546, 46 L.Ed.2d at 510 *quoting from* 25 U.S. (12 Wheat.) at 443, 6 L.Ed. at 687. "[T]he tax intercepts the import, *as an import,* in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed to the revenue of the State." (Emphasis supplied.)
27. 25 U.S. (12 Wheat.) at 443, 6 L.Ed. at 687.
28. ___ U.S. at ___, 96 S.Ct. at 547, 46 L.Ed.2d at 510.
29. 46 U.S. (5 How.) 504, 12 L.Ed. 256 (1847).
30. ___ U.S. at ___, 96 S.Ct. at 547, 46 L.Ed.2d at 511.

> *ing to the amount of his property, whether it consists of money engaged in trade, or of imported goods which he proposes to sell,* or any other property of which he is the owner. But a tax of this description stands upon a very different footing from a tax on the thing imported, while it remains a part of foreign commerce, and is not introduced into the general mass of property in the State.[31]

In arriving at the conclusion, as the Court did, that nondiscriminatory ad valorem taxes are not within the prohibition of the Constitution, it was necessary that *Low* be overruled. The Court in supporting its conclusion carefully set forth the concerns of the drafters of the Constitution which led to the inclusion of the Import-Export Clause. In light of these concerns the Court analyzed the *Brown* decision and the opinion of Chief Justice Taney in the *License Cases.* This analysis provided convincing evidence that *Low* was wrongly decided and that the tax in question was not prohibited by *Brown.*

In overruling *Low* the Court allows states to assess nondiscriminatory ad valorem taxes on goods within their boundaries without entering into the traditional analysis as to their character.[32] Thus, the decision of the Court allows states to obtain revenue to pay for required services without discrimination in favor of importers and imported goods. Such taxation is "the quid pro quo for benefits actually conferred by the taxing state."[33]

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31. *Id.* at ____, 96 S.Ct. at 547-548, 46 L.Ed.2d at 512 *quoting from* 46 U.S. (5 How.) at 576, 12 L.Ed. at 286 (emphasis added). *Low* relied only on that portion of the opinion which dealt with a tax upon imports as imports. *Id.* at ____, 96 S.Ct. at 547, 46 L.Ed.2d at 511. Historically, it is interesting to note that in *Brown,* Chief Justice Taney had argued for the license Fee as the State Attorney General. In the *License Cases* he acknowledged his agreement with the *Brown* Court. 46 U.S. (5 How.) at 575, 12 L.Ed. at 288.

32. ____ U.S. at ____, 96 S.Ct. at 548, 46 L.Ed.2d at 513 (as the concurrence by Justice White would require).

33. *Id.* at ____, 96 S.Ct. at 542, 46 L.Ed.2d at 505 (police and fire protection).